

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MARIA MAGDALENA GONZALEZ

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v.  
KROGER TEXAS L.P.

CASE NO. 4:21-cv-2206 §

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE THAT Defendant Kroger Texas L.P. (hereinafter referred to as “Defendant”), while fully reserving all rights and defenses, files this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division. Removal is proper under 28 U.S.C. §§1332 and 1441(a) because this is an action over which the United States District Court for the Southern District of Texas, Houston Division, has original diversity jurisdiction, as it is an action between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its Notice of Removal, Defendant respectfully would show as follows:

**I. GROUNDS FOR REMOVAL**

1. This case is removable to this Court based on diversity jurisdiction under 28 U.S.C. §§1332 and 1441(a).
2. Plaintiff Maria Magdalena Gonzalez (hereinafter referred to as “Plaintiff”) is an individual who is a citizen of Texas, and is a resident of the State of Texas.
3. Kroger Texas L.P. is a limited partnership. KRGP, Inc. is the General Partner of Kroger Texas L.P., and KRLP, Inc. is the Limited Partner of Kroger Texas L.P. Both are organized and existing under the laws of the State of Ohio.
4. As described more fully below, Plaintiff seeks to recover from the Defendant an

amount of \$300,000.00 or less, excluding interest and costs, in her state court action.

## **II. PENDING STATE SUIT**

5. On or about May 7, 2021, Plaintiff filed an Original Petition against Defendant in Cause No. 2021-27545 styled *Maria Magdalena Gonzalez v. Kroger Texas L.P.* in the 164th Judicial District Court of Harris County, Texas.<sup>1</sup>

6. According to Plaintiff's Original Petition, he was at the Kroger store located at 6315 Garth Road, Baytown, Texas on April 23, 2020, when he slipped and fell on a an alleged piece of raw chicken that was on the floor.<sup>2</sup>

7. Plaintiff allegedly sustained bodily injuries as a result.<sup>3</sup>

8. The name and address of the Court from which the case is being removed is:

164th District Court  
Harris County Civil Courthouse  
201 Caroline Street  
Houston, Texas 77002

## **III. STATE COURT DOCUMENTS**

9. The following documents are attached to this Notice of Removal:

Exhibit "A" Plaintiff's Original Petition.

Exhibit "B" Certificate of Service, Plaintiff's Original Petition.

Exhibit "C" Defendant's Original Answer.

Exhibit "D" An index of matters being filed.

D-1 Copy of the state court Docket Sheet/Record.

D-2 Copy of process.

D-3 A list of all counsel of record, addresses, telephone numbers, and parties.

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<sup>1</sup> See *Plaintiff's Original Petition*, a true and correct copy of which is attached hereto as Exhibit A.

<sup>2</sup> *Id.*.

<sup>3</sup> *Id.*

D-4 Civil Cover Sheet

#### **IV. TIMING OF REMOVAL**

10. Defendant was served with Plaintiff's Original Petition on June 7, 2021.<sup>4</sup> This Notice of Removal is being filed within 30 days of service of the Original Petition upon Defendants and is timely filed under 28 U.S.C. §1446(b).

#### **V. JURISDICTION**

11. Pursuant to 28 U.S.C. §1332, a defendant has a right to remove a case to federal court if the case involves a dispute between completely diverse parties and the amount in controversy, excluding interest and costs, exceeds \$75,000.00.

12. Plaintiff has asserted that he seeks damages in an amount less than \$300,000.00.<sup>5</sup> Based on the allegations in Plaintiff's Original Petition, this matter is removable to this Court under 28 U.S.C. §1332 because the amount in controversy, excluding interests and costs, exceeds \$75,000.00.

13. Plaintiff also alleges in his Original Petition that he is a citizen of Texas.<sup>6</sup>

14. Kroger Texas L.P. is a limited partnership. KRGP, Inc. is the General Partner of Kroger Texas L.P., and KRLP, Inc. is the Limited Partner of Kroger Texas L.P. Both are organized and existing under the laws of the State of Ohio.

15. Accordingly, there exists complete diversity of citizenship between Plaintiff and Defendant under 28 U.S.C. §1332.

#### **VI. VENUE**

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<sup>4</sup> See Plaintiff's Original Petition, attached as Exhibit A.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

16. Pursuant to 28 U.S.C. §1441(a), venue for this action is proper in the United States District Court for the Southern District of Texas, Houston Division, as it is the federal judicial district that encompasses the 164th District Court of Harris County, Texas where the state action was originally filed.

#### **VII. NOTICE TO ADVERSE PARTIES AND TO STATE COURT**

17. As the removing party, Defendant will give Plaintiff prompt written notice of this Notice of Removal as required by 28 U.S.C. §1446(d).

18. Defendant will also file a copy of this Notice of Removal with the 164th District Court of Harris County, where the state court action is currently pending, as required by 28 U.S.C. §1446(d).

#### **VIII. ANSWER**

19. Defendant timely filed an answer in the state court action. By removing this action to this Court, Defendant does not waive any defenses, objections or motions available to it under state or federal law, and will timely file responsive pleadings to Plaintiff's Original Petition in this Court as well.

#### **PRAYER**

20. For these reasons and in conformity with 28 U.S.C. §1446, Defendant respectfully removes the civil action styled *Maria Magdalena Gonzalez v. Kroger Texas L.P.*, and bearing Cause No. 2021-27545 on the docket of the 164th District Court of Harris County, Texas. Defendant prays for such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted by,

/s/ Adraon D. Greene

Adraon D. Greene

Attorney-in-Charge

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**ATTORNEYS FOR DEFENDANT**

**KROGER TEXAS L.P.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of July, 2021, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. I also certify that I have forwarded this filing by regular U.S. Mail, postage pre-paid, this same day to all non-CM/ECF participants.

Chris Sanchez  
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McAllen, TX 78501

/s/ Kelsi M. Wade

Adraon D. Greene

Kelsi M. Wade